IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 287 OF 2000

Jimmy Mistry ...Petitioner.

V/s

State of Maharashtra
and anr. ...Respondents.

Mr. S.K. Jain for the petitioner.

None appears for respondent No.2.

Ms. Rajeshree M. Gadhvi, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 31st January, 2006

P.C:

1. The learned Counsel appearing on behalf of respondent No.2 submits that they have already returned the papers to their client and hence have no instructions from him thereafter.

2. Heard the learned Counsel for the petitioner. None appears for respondent No.2, though he is served.

3. The petitioner is challenging the order of issuance of process by the Metropolitan Magistrate, 13th Court, Dadar, Mumbai in Criminal Case No.134/S of

1999. A complaint was filed against the present petitioner on the ground that he had committed an offence punishable under sections 406, 420 of the Indian Penal Code read with section 34 of the Indian Penal Code. The petitioner carries on the business of supplying furniture and also gives advise to his clients regarding the interior decoration of the flats, offices, residential premises etc. An agreement was executed between the petitioner and the complainant in which the petitioner specifically stated that time would be an essence of the contract. It is alleged by the complainant in the complaint that the petitioner herein did not complete the said contract of supplying furniture within time and, therefore, the complainant demanded return of the various amounts which were paid to the petitioner. The petitioner gave reply stating that they had supplied the furniture and rendered services and that the complainant was, in fact, liable to pay various amounts to the petitioner. However, the respondent No.2 did not accept the said reply and proceeded to file the present complaint.

4. A perusal of the complaint discloses that the dispute, essentially, was of a civil nature and though it is admitted in the complaint that the furniture was

supplied and advise regarding interior decoration was given, this advise regarding the manner in which the premises were to be decorated was not accepted and that the delay was caused in completing the work. A perusal of the averments in the said complaint, therefore, even if they are accepted at their face value, shows that no case is made out for the offence punishable under section 406, 420 read with section 34 of the Indian Penal Code.

5. In the result, application is allowed and the process which is issued by the Magistrate is quashed and set aside. Rule is made absolute in terms of prayer clause (a).

V.M. KANADE, J.